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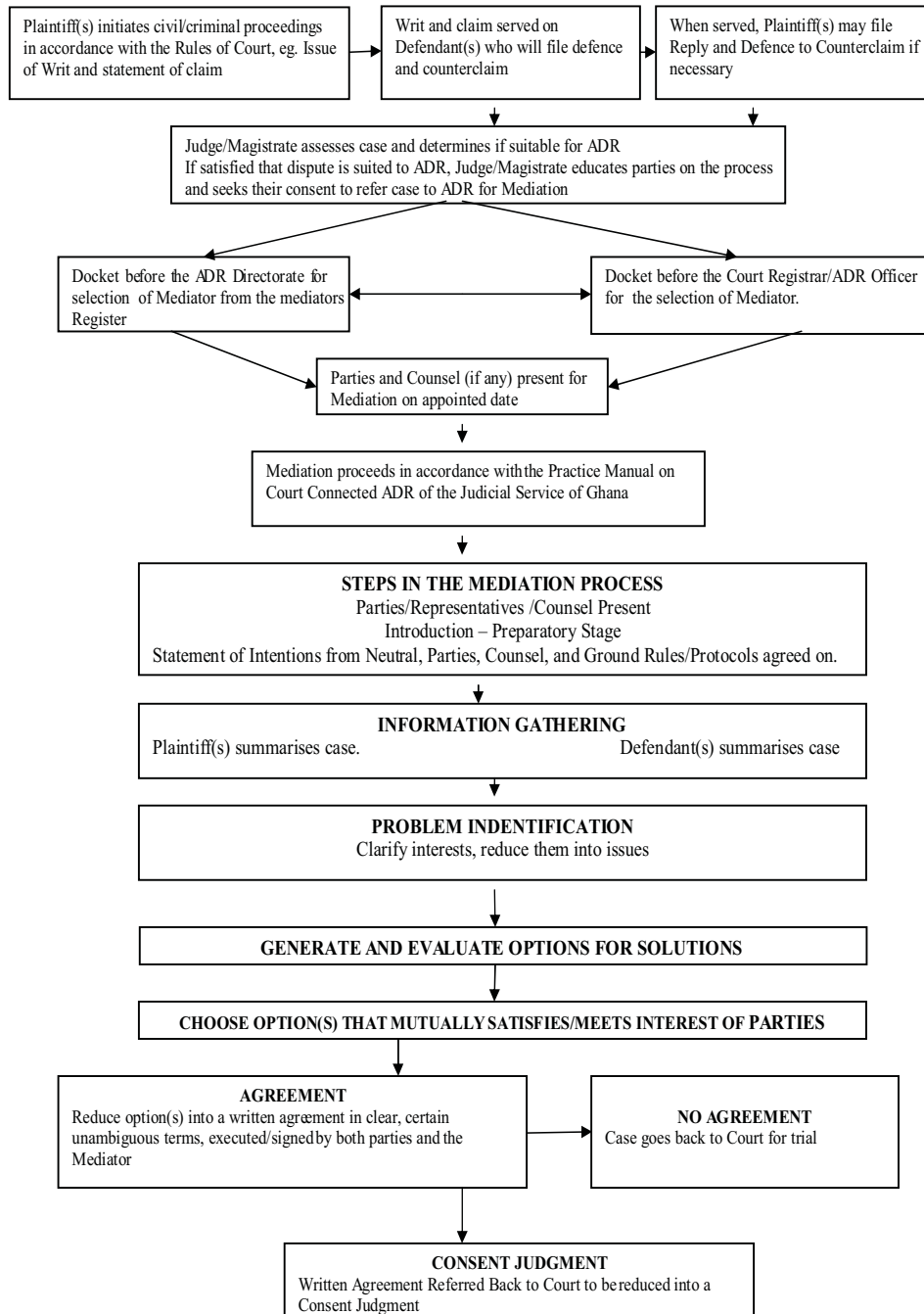
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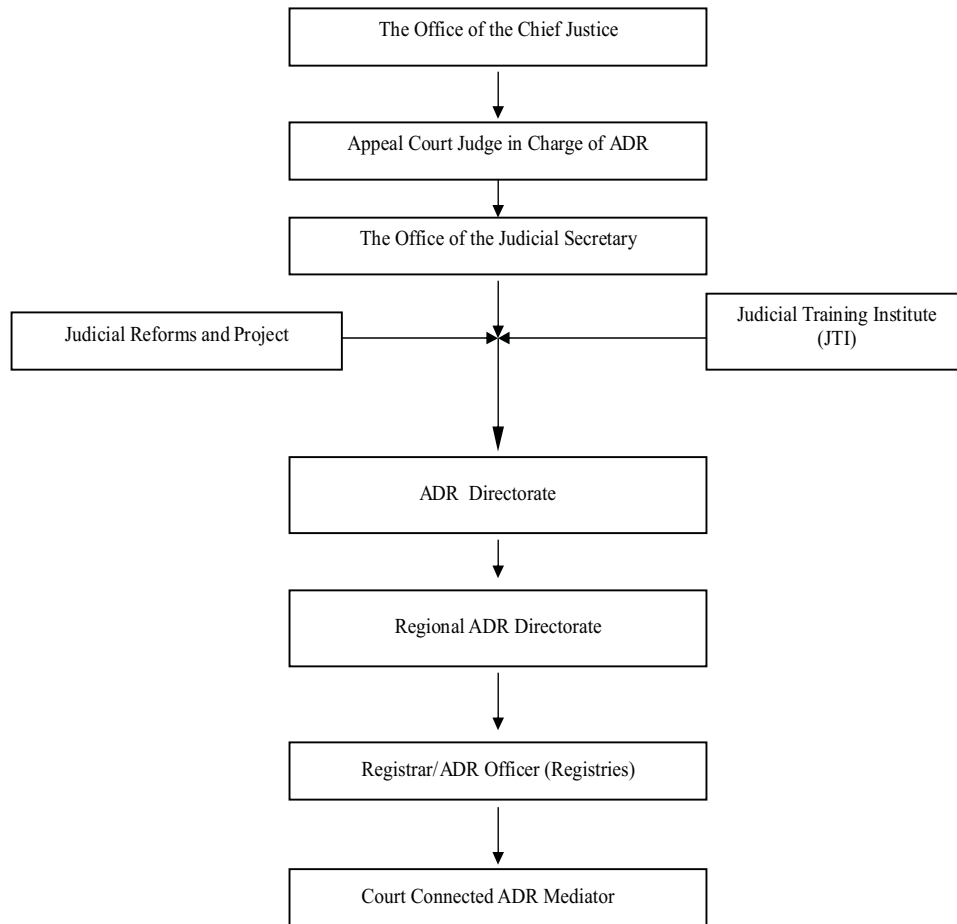
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EXTRACT FROM GHANA BAR ASSOCIATION, CODE OF ETHICS AND CONSTITUTION

- 43(1) It is the duty of the lawyer to advise his client to avoid or to terminate litigation whenever the controversy will admit of fair settlement.
- (43(2) A lawyer commits misconduct if:-
- a. He fails to communicate to his client the terms and effect of any settlement offered to his client or,
 - b. Declines to take an available opportunity in the client's interest to reach a solution by a fair settlement out of court instead of engaging in legal proceedings.

COURT CONNECTED ADR ORGANOGRAM**ORGANOGRAMME**

This Manual is the product of a Workshop in 2007 by the Judicial Service (ADR Directorate) of Ghana with support from the United Nations Development Programme (UNDP).

The proposal for the Workshop followed from the realization that the availability of a manual on the practice of Court-Connected ADR in Ghana will enhance the general effort being made, particularly by the Judiciary, in the institutionalization of ADR as a recognized aspect of the judicial process in the country. The existence of the practice manual that is generally accepted will assist in formalizing the process along certain uniform lines and also further the general acceptability of Alternative Dispute Resolution in the country.

In addition, it is believed that the Manual will completely transform for the better, ADR practice in the traditional sector where the Manual will become a basic guide for the traditional rulers and other private practitioners engaged in the ADR process. This Manual is therefore designed as a guide for all credible ADR practitioners in the country.

The Judicial Service acknowledges the immense contribution made by the ADR Coalition of Ghana and UNDP towards the development of this manual and particularly appreciates their kind permission for the use of their Chapters 1-3 and 7 of the Manual on ADR General Practice as the base documents for the development of the relevant paragraphs of this manual. With the enactment of the Alternative Dispute Resolution Act (Act 798) of 2010, the Judicial Service has reviewed this manual to bring it in tune with the provisions of the Act.

September, 2010

**COURT CONNECTED ALTERNATIVE DISPUTE RESOLUTION
(CCADR)
CONSENT FORM**

DISTRICT/CIRCUIT/HIGH/ APPEAL/ SUPREME COURT

In the.....Court

Case/Suit No.....

Station:.....

Date:.....

The Registrar/ADR Officer/ Mediator having explained to the parties and their Solicitors (where applicable) the nature of the **Confidential ADR process**, the parties to this action hereby confirm their voluntary consent to (CCADR) process.

1. To attend:

- | | | | |
|-----------------|--------------------------|---------------------------|--------------------------|
| (a) Mediation | <input type="checkbox"/> | (d) Conciliation | <input type="checkbox"/> |
| (b) Arbitration | <input type="checkbox"/> | (e) Customary Arbitration | <input type="checkbox"/> |
| (c) Negotiation | <input type="checkbox"/> | (f) Med-Arb | <input type="checkbox"/> |

2. Date of Session:.....

Signatories:-

- (i) Plaintiff(s)/Complainant(s):.....
- (ii) Plaintiff(s)/Complainant(s) Solicitor:.....
- (iii) Defendant(s)/Accused:.....
- (iv) Defendant(s)/Accused Solicitor:.....

Neutral:.....

.....
Judge/Magistrate/ADR Officer

DECLARED AT..... THIS.....
DAY OF..... 20.....
After the contents had been read
over and interpreted to him/her in
the local language by.....
when he/she seemed to understand
same before making his/her mark hereto

Full Name:.....
Court:.....
.....
DECLARANT

**CHAPTER ONE
WHAT IS ADR?**

1.1 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) refers to a range of procedures that serve as alternatives to traditional litigation for the resolution of disputes and generally involves the assistance of a neutral or impartial third party.

1.2 The Court-Connected ADR

This refers to the various methods of resolving disputes that are available to the court other than court trial processes. The methods include:-

- a. Negotiation,
- b. Mediation,
- c. Conciliation,
- d. Arbitration,
- e. Customary Arbitration,
- f. Mediation-Arbitration (Med-Arb), and
- g. Neutral Case Evaluation

Mediation however is the main method used for the Court Connected ADR (CCADR).

1.3 Nature and Characteristics of Court-Connected ADR (CCADR)

ADR may be voluntary or mandatory if the law so requires, for instance at the Commercial Court it is mandatory.

CCADR is

- a. Confidential,
- b. Private,

- c. Relatively fast
- d. Relatively cheap
- e. Preserves relationships between parties,
- f. Agreements or awards obtained through it are final and binding

1.4 Benefits of Court Connected ADR

1.4.1 To the Parties

- a. parties actually own the process
- b. it encourages access to justice for the poor and the vulnerable
- c. saves time and money
- d. increases flexibility and control in:
 - i. the procedures followed
 - ii. the interest considered and
 - iii. agreements reached.
- e. private and confidential
- f. improves communication and preserves relationships, and
- g. reduces stress and enhances personal satisfaction

1.4.2 To the Judicial System

- a. results in having satisfied Parties
- b. offers comparative advantages
- c. reduces backlog of cases pending in the Courts,
- d. leads to greater professional satisfaction
- e. it enhances confidence in the Judicial System

1.4.3 Drawbacks of Court Connected ADR

In spite of its many benefits, ADR has its drawbacks which include:-

- a. fewer evidentiary and procedural protections
- b. No right of Appeal

CHAPTER EIGHT

ADR SERVICE PROVIDERS

8.1 Constitutional and other Statutory Bodies

8.1.1 The Commercial Courts At the Commercial Court ADR is mandatory through the pre-trial conferences

8.1.2 The Courts

At the first appearance of the parties before judgement.

8.1.3 The Labour Commission

The Labour Act, 2003 (Act 651) provides that every Collective Agreement shall contain a provision for final and conclusive settlement by ADR in accordance with the Act.

8.1.4 Commission on Human Rights and Administrative Justice (CHRAJ)

CHRAJ provides ADR services through negotiations and other ADR processes.

The CHRAJ deals with human rights and administrative disputes.

8.1.5 Land Title Registry

The Land Title Registry settles land disputes through mediation and adjudication.

8.1.6 Private Service Providers

There are individual and private service providers in addition to the constitutional and statutory bodies. Some of these private service providers include the Ghana Association of Chartered Mediators and Arbitrators (GHACMA), Gamey & Gamey, National Arbitration Center and the Legal Aid Board, West Africa Dispute Resolution Centre (WADREC) and Federation of International Women Lawyers (FIDA-Ghana).

- parties,
- (b) has previously represented either of the parties in any capacity.
- (c) has or has had a relationship with one of the parties,
- (d) is in any other circumstance that may raise a question of the neutral's impartiality.

7.7 Confidentiality

- (1) A neutral shall not disclose information the neutral obtains during an ADR process to another person without the consent of the parties.
- (2) Despite the requirement of confidentiality, a neutral shall disclose information the neutral obtained during an ADR process if the neutral is required by law to disclose the information in a matter related to
 - (a) the abuse of children,
 - (b) commission of a crime, or
 - (c) danger of serious physical harm to a party, another person or damage to property.

7.8 Requirement for Best Practice

A neutral

- (a) shall return any case that is outside the neutral's area of competence or expertise to the court through the ADR Officer for reassignment to a more competent neutral;
- (b) shall report to the ADR Officer the need for professional assistance in respect of any specialized area of the case before the neutral.
- (c) may with the agreement of the parties invite a professional to assist that neutral in the mediation process; and
- (d) has a duty to report any misconduct by a co-neutral or other neutral.

- c. Not providing the opportunity for the development of legal precedents
- d. Parties not making themselves available in order to buy time and
- e. Misuse and abuse of confidential information disclosed during ADR

1.5 Cases Inappropriate for Court Connected ADR

Despite the numerous advantages of Court Connected ADR, certain cases are not suitable for any type of ADR and these include:-

- a. child custody cases in which sexual, physical, mental, psychological or verbal abuse is alleged,
- b. disputes raising some constitutional, human rights or important public law and order issues,
- c. disputes involving interpretation of statutes or documents
- d. civil disputes in which substantial fraud, forgery or stealing is alleged
- e. where the court has reasonable cause to believe that the parties intend to use the ADR process to delay the court process,
- f. dispute out of which a precedent should be set,
- g. a case that is a felony or aggravated assault, and
- h. disputes pertaining to jurisdiction

CHAPTER TWO

LEGAL MANDATE FOR COURT CONNECTED ADR

2.1 Basic Legal Mandate

The legal mandate for Court Connected ADR practice in Ghana is found in Sections 72 and 73 of the Courts' Act 1993 (Act 459) as amended and Order 58 Rule 4 of the High Court Civil Procedure Rules 2004 C.1 47, as well as in the various enactments listed in 2.1.3

2.1.1 COURTS ACT 1993 (ACT 459)

Section 72 (1) "Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction".

(2) "When a civil suit or proceeding is pending, any court with jurisdiction in that suit may promote reconciliation among the parties and encourage and facilitate the amicable settlement of the suit or proceeding".

Section 73 "Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment of compensation or on other terms approved by the court before which the case is tried. And may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person"

2.1.2 HIGH COURT CIVIL PROCEDURE RULES 2004, C.I. 47 ORDER 58 RULE 4

Procedure after reply

Rule 4(1) After a Reply has been filed or the time for filing the Reply has elapsed, the Administrator of the Commercial Court shall, within three days assign the case to one of the Commercial Court Judges, to conduct a pre-trial settlement conference.

(2) The pre-trial judge shall within a period of thirty (30) days from

- a. has an undisclosed pecuniary or other interest in the dispute or in any of the parties,
 - b. puts undue pressure on a party to settle
 - c. has a relationship with
 - i. a party
 - ii. a relative of a party
 - iii. a close associate of a party, or
 - iv. a person who is known to be a potentially important witness.
- (2) A neutral shall decline an appointment if the impartiality of the neutral is likely to be an issue unless the parties agree in writing that the neutral may proceed with the ADR process.
- (3) Continuing and substantial social or professional relationships between a prospective neutral and a party or with a person who is known to be a potentially important witness in an ADR process is a good ground for justifiable doubt as to the impartiality and independence of a prospective neutral.

7.4.3 Independence

A Neutral shall carry out hi/her duty free from any external influence which is likely to affect the outcome of the dispute.

7.5 Abuse of ADR Process

Where a neutral finds in the course of an ADR proceedings that

- a. a party is abusing the ADR process,
- b. a party is unwilling to resolve the dispute
- c. the power imbalance between the parties is so substantial that the ADR process may result in an unfair and unjust outcome to a party:- the neutral shall terminate the ADR process and report to the ADR officer

7.6 Conflict of Interest-

A neutral shall not accept an appointment where the neutral

- (a) has prior knowledge of the subject matter of the dispute from any of the parties or the representatives or associates of the

CHAPTER SEVEN
ETHICS OF ADR PRACTICE

7.1 Purpose of Ethical Standards

The purpose of the ethical standards of practice for ADR practitioners is to;

- a. provide model standards of conduct,
- b. promote excellence in practice
- c. provide ethical, competent, appropriate and effective means of dispute resolution, and
- d. promote public confidence in ADR

7.2 Fundamental Rule

Neutrals shall be free from bias and shall proceed diligently and efficiently to assist the parties to reach a just and effective resolution of their dispute.

7.3 Acceptance of Appointment

A person shall not accept appointment as a neutral if that person is not competent in the particular ADR process and cannot devote the time and professionalism required.

7.4 Elements of Bias

The criteria for assessing questions relating to bias are impartiality and independence.

7.4.1 Impartiality

Impartiality means freedom from favouritism, sex, religion, ethnicity, or bias either by appearance, word, conduct, action, and a commitment to help parties in resolving a dispute. A neutral must not;

- a. accept gifts or offers before, during or after an ADR process, or
- b. request for favours or items or service of value from any of the parties.

7.4.2 Partiality

(1) Partiality arises if a neutral

the date the case is assigned to him invite parties to settle issues for trial and effect settlement of the dispute.

(3) At a pre-trial settlement conference, the parties may be represented by their counsel.

(4) Experts may be invited by the pre-trial judge to assist at the pre-trial settlement conference.

2.1.3 Legislation which provide for ADR

Enactments which provide for ADR include:-

- a. The Alternative Dispute Resolution Act, 2010 (Act 798)
- b. Matrimonial Causes Act, 1971 (Act 367)
- c. The Copyright Law, 1985 (PNDCL 110)
- d. Land Title Registration Law 1986, (P.N.D.C.L.152)
- e. National Media Commission Act, 1993 (Act 449)
- f. Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)
- g. Minerals and Mining Act, 1994 (Act 475)
- h. Ghana Investment Promotion Centre Act, 1994 (Act 478)
- i. National Development Planning Commission Act, 1994 (Act 479)
- j. Public Services Commission Act 1994 (Act 482)
- k. Locksmith Licenses Act, 1994 (Act 488)
- l. Free Zones Act, 1995 (Act 504)
- m. Ghana Postal Services Corporation Act 1995 (505)
- n. Public Utilities Regulatory Commission Act, 1997 (Act 538)
- o. Energy Commission Act 1997 (Act 541)
- p. Children's Act 1998 (Act 560)
- q. Labour Act 2003 (Act 651)
- r. High Court Civil Procedure Rules (C.I.47)
- s. Domestic Violence Act, 2007 (Act 732)

CHAPTER THREE
COURT CONNECTED ADR METHODS

3.1 Negotiation

Negotiation is a process by which parties to a dispute or their representatives discuss the issues in dispute with the intention to settle the dispute without the intervention of a third Party.

3.2 Mediation

Mediation is a process by which a neutral third Party, a mediator, facilitates communication between the parties to assist the parties to reach a mutually acceptable settlement.

3.3 Conciliation

Conciliation is a process by which a third person on request assists the parties to amicably settle their dispute. The neutral third person may ask the parties to submit evidence and make settlement proposals.

3.4 Arbitration

Arbitration is the process of voluntary submission of a dispute to one or more neutral persons for a final and binding determination.

3.5 Customary Arbitration

Arbitration is customary if

- a. The parties voluntarily submit their dispute to an arbitrator(s) acting under customary law or according to customary traditional norms.
- b. The submission to customary arbitration is demonstrated by the performance of the requirement necessary for the process
- c. There must be prior agreement to accept the award
- d. The award must be published (announced to the parties)

3.6 Med-Arb

Med-Arb is a process which starts with mediation and concludes

- b. The ADR Officer shall inform the parties to appear in court at the next sitting day.

6.5 Protection for Children

ADR processes should be conducted in the best interest of children where the matter in dispute affects children. Children should be shielded from witnessing hostilities between the parties by consulting the parties in private.

6.6 Destruction of Records

At the close of the ADR session, a neutral shall destroy all written information gathered at the ADR session in the presence of the parties and return tape recordings, video clips, pictures, receipts, maps and other information in permanent form to their owners.

6.7 Post Settlement Procedure Where the parties reach a settlement

- a. the parties or the neutral shall send the terms of settlement to the ADR officer for filing.
- b. If the court is in session, the ADR officer shall immediately send the terms of settlement to the court and request the parties to appear before the court that same day or the next sitting day, and
- c. The court shall enter the terms of settlement without modification as consent judgement.

CHAPTER SIX
ADR SESSIONS

6.1 Medium of Expression

All ADR shall be conducted in a language determined by the disputants. Where the court interpreter cannot satisfy the needs of the parties, the parties shall engage the service of an interpreter at their own cost.

6.2 Termination of Proceedings

The Neutral may terminate proceedings within 30 days if parties are unable to reach settlement.

Neutral shall request for extension of 30 days if settlement is not reached within the specified period.

6.3 Drawing up of Settlement Agreements

Where the parties reach a settlement

- a. the parties shall draw their own Terms of Settlement, or
- b. the neutral may draw the agreement at the request of the parties and state on the agreement that the neutral drew up the settlement agreement at the request of the parties, and
- c. the agreement shall
 - (i) be in simple language
 - (ii) be certain and not vague, and
 - (iii) clearly specify obligations of each party and the dates or periods by which obligations are to be carried out,
- d. the parties shall sign or thumbprint the Terms of Settlement with the necessary jurat where a party is illiterate or blind.

6.4 Failure of Settlement

Where parties fail to reach a settlement

- a. the neutral shall terminate the proceedings and notify the ADR officer in writing.

with arbitration. This occurs where the parties agree before the mediation process, that there should be arbitration if the mediation fails. The parties must in their agreement determine whether the same neutral should conduct both processes.

3.7 Neutral Case Evaluation

Neutral Case Evaluation is a process by which the parties, their lawyers or both the parties and their lawyers appear before a neutral, present a brief of the evidence and arguments in support of their respective cases. The neutral makes a non-binding evaluation of their positions and gives an opinion concerning the likely outcome if the dispute is tried in court. Based on the evaluation, the parties may decide on what dispute resolution process to use to reach a mutually acceptable agreement.

CHAPTER FOUR

KEY PARTICIPANTS IN COURT CONNECTED ADR PROCESS

4.1 Parties

In a Court Connected ADR, parties means disputants

Rights of parties

- a. Own the dispute and may choose to 'manage' the resolution of the dispute through any ADR process.
- b. Choose their own neutrals or consent to the choice of a neutral for them where they are unable on their own to agree on a neutral.
- c. Are at liberty to withdraw from negotiation, conciliation or mediation session before an agreement is signed or thumb printed.
- d. Or their representatives determine the terms of agreement in a participatory process.
- e. If they choose a neutral outside the court approved list of neutrals, they pay the fees of their neutral.
- f. Where they choose a venue other than the venue recommended by the ADR officer, they pay for the use of the venue.

4.2 The National ADR Coordinator

The National ADR Coordinator is the person designated by the Judicial Service to be in charge of the implementation and management of the day to day activities of the ADR Directorate.

The National ADR Coordinator must have had a minimum of forty (40) hours of training in the theory and practice of ADR.

4.2.1 Functions of the National ADR Coordinator

- a. Responsible for general administrative requirements needed to sustain a vibrant Court Connected ADR scheme.

- h. the Arbitrator shall decide the dispute in accordance with law or other considerations agreed by the parties;
- l. the award is final and binding on the parties and any person claiming through or under them;
- j. an arbitrator may refuse to deliver an award to the parties until there is full payment of the fees and expenses of the arbitration.

5.7.3 Enforcement of Arbitration Award

An arbitration award may be enforced in the same manner as a judgment or order of a court of competent jurisdiction.

5.8 Customary Arbitration

Customary Arbitration is a form of Arbitration initiated;

- a. by the parties to a dispute
- b. by invitation of a chief, or
- c. on recommendation of a family elder or other person.

5.8.1 Awards in Customary Arbitration

In Customary Arbitration Parties may take the necessary legal steps as exists under the rules of court to have the award registered and enforced.

5.7.1. Issues to be Resolved at the Pre-Hearing

The following issues are resolved at the pre-hearing;

- a. the date, time, place, language and estimated duration of the proceedings;
- b. the need for discovery, production of documents or the issue of interrogatories and the establishment of how these shall be done;
- c. the applicable laws and rules of evidence;
- d. the exchange of witness statements and all other related issues;
- e. the form of the Award;
- f. Costs and Arbitration fees; and
- g. Any other issues relating to the arbitration.

5.7.2. Arbitration Hearing

In an arbitration

- a. a party may be represented by a lawyer or any other person;
- b. unless otherwise agreed by the parties, the hearing shall be in private;
- c. the Arbitrator may at the beginning of the hearing ask for opening statements from the parties to clarify the issues involved in the Arbitration;
- d. the claimant shall first present evidence in support of the claim of the claimant and this shall be followed by the respondent;
- e. an Arbitrator may vary the order of presentation;
- f. the Arbitrator shall give the parties sufficient notice of any hearing and an opportunity to inspect documents and other property relevant to the dispute;
- g. an Arbitrator may grant an Interim relief that the Arbitrator considers necessary for the protection or preservation or property at the request of a party;

- b. Develops ADR System that meets the needs of parties in dispute who patronize ADR processes in the Courts.
- c. Review existing ADR process system for improvements
- d. Liaises with other units of the Service to enhance ADR Service delivery
- e. Disseminates information on ADR to the General Public
- f. Answer enquiries on ADR processes in the Judicial Service and also provides public education to all stakeholders through the electronic and print media.

4.2.2 The Regional ADR Coordinator

The Regional ADR Coordinator is the person designated by the Judicial Service to be in charge of the ADR programme and activities at the Regional level and must have had a minimum of forty (40) hours of training in the theory and practice of ADR.

The Regional ADR Coordinator reports directly to the National ADR Coordinator.

4.2.3 Functions of the Regional ADR Coordinator

- a. Co-ordinates activities regarding ADR in the Region
- b. Ensures that Court Registrars submit ADR returns to National ADR Directorate at the end of each month.
- c. Liaises with the National ADR Co-coordinator to enhance ADR service delivery.
- d. Organises Seminars/Workshops to educate the public on ADR matters.
- e. Any other duties that may be assigned by the National ADR Coordinator
- f. Assist in reviewing ADR process systems for improvement

4.2.4 ADR officer

The ADR Officer is the person designated by the Judicial Service to facilitate the ADR process at the court registry and must have had a minimum of forty (40) hours of training in the theory and practice of ADR.

4.2.5 Functions of the ADR Officer

- a. arranges a meeting with the parties
- b. chooses a venue and informs the parties
- c. ensures that the ADR Consent Form is properly completed.
- d. assists parties to choose a neutral from the register of neutrals and service providers at the request of the parties.
- e. ensures that a *'Jurat'* is inserted in the settlement where any of the parties is illiterate or blind, and
- f. ensures that terms of settlement are properly drawn up, signed or thumb printed and transmitted immediately to the court for adoption.

4.3 Neutral

A neutral is an independent person who assist parties to resolve their dispute.

- a. is an intervener obliged to be impartial in relation to the parties to the dispute,
- b. may be a mediator, conciliator or arbitrator,
- c. assists the parties in reaching a mutually acceptable settlement,
- d. facilitates and promotes constructive communication between the parties
- e. develops trust and confidence of parties in ADR process
- f. establishes a framework for co-operative decision making
- g. analyses the disputes and designs appropriate interventions
- h. separates interests from positions

- c. The Mediator or Conciliator shall emphasise the requirement of Neutrality, Impartiality and Confidentiality;
- d. The Mediator or Conciliator shall explain the concept of caucus to the parties;
- e. At the joint sessions each party must describe how the party views the dispute, the party's understanding of the issues, the party's interests and preferred outcomes;
- f. The Mediator or Conciliator shall agree with the parties on the issues for settlement;
- g. The Mediator or Conciliator may meet each party privately (in caucus) to explore options for resolution;
- h. The Mediator or Conciliator should act as an agent of reality;
- i. When sufficient common ground for agreement has been established, a final joint session must be held for the parties to formulate offers for settlement.

5.6.1 Settlement Agreement

In Negotiation, Mediation or Conciliation,

- a. Where the parties reach an agreement, the parties shall write and sign the terms of settlement.
- b. The parties may write the terms of settlement at the request or with the assistance of the Mediator or Conciliator.
- c. The agreement becomes legally binding once it is reduced into a final written agreement and signed by the parties; and
- d. The ADR Officer shall submit the agreement to court to be entered as a consent judgment.

5.7 Arbitration Process

The arbitral process shall be regulated by the agreement of the parties, rules of the service provider or by statute.

- a. trained neutrals, and
- b. ADR service providers.

5.4 Selection of a Neutral or ADR Service Provider

For the purpose of selecting a neutral or ADR Service Provider

- a. the parties may choose a neutral from the register of neutrals or ADR service providers.
- b. where the parties are unable to choose a neutral, the court shall appoint a neutral from the court approved Register.
- c. Where the parties choose a neutral or ADR service provider other than from the Register, the parties shall pay for the service

5.5 Rules for Negotiation

In negotiation, the parties

- a. may conduct the process themselves or by their representatives;
- b. shall conduct the process in good faith;
- c. must formulate the ground rules to regulate the negotiation;
- d. shall focus on their interests rather than their positions;
- e. are required to generate options that would eventually lead to the settlement of their dispute;
- f. must be encouraged to be flexible and to work towards just and fair settlement.

5.6 Mediation and Conciliation Process

In mediation or conciliation, the neutral third party shall facilitate the settlement of the dispute between the parties. The mediation and conciliation process requires that;

- a. The Mediation or Conciliation session must usually begin with an initial joint session with the parties at which session the role of the mediator or conciliator shall be clearly defined;
- b. As part of the pre-mediation process the mediator or conciliator may require the parties to submit or exchange initial statements;

- i. advises and evaluates
- j. develops and generates options for possible settlement
- k. terminates the process if it is obvious that settlement cannot be reached, and makes an award where the neutral is an arbitrator

4.3.1 Qualification of a Neutral

A Court Registered neutral shall;

- a. have a minimum of forty hours basic training in ADR theory and practice.
- b. undertake appropriate continuing education and practice in ADR determined by the ADR Directorate of the Judicial Service.

4.3.2 Disqualification of a Neutral

The ADR Directorate may disqualify a neutral from participating in the Court Connect ADR for lack of training or misconduct.

4.3.3 Remuneration

Neutrals shall be recompensed at rates determined by the ADR Directorate taking into consideration;

- a. qualification of the neutral,
- b. expertise of the neutral, and
- c. complexity of the matter in dispute

4.3.4 Natural Justice

A neutral shall abide by the Rules of Natural Justice which includes

- a. giving a party equal opportunity to present his or her case
- b. refrain from handling a case in which the neutral has an interest

4.3.5 Immunity of a Neutral

A neutral and an employee or agent of the neutral are not liable for any act or omission in the discharge of duty unless the act or omission complained of is in bad faith or is a Criminal Act.

4.4 Duties of Judges and Magistrates in respect of Court Connected ADR

Judges and Magistrates:

- a. have a duty to facilitate, promote and refer cases to ADR where appropriate, and
- b. may also participate in ADR as neutrals where appropriate.

4.5 Lawyers

A lawyer's role varies depending on the ADR process. Lawyers shall:

- a. encourage their clients to settle their differences to avoid the costs, delays and difficulties of traditional litigation.
- b. Advise their clients to include ADR clauses in all written agreements,
- c. Advise on the appropriateness of ADR, the choice and timing of the process,
- d. Not undermine or abuse the ADR process,
- e. Play a key role in the presentation and conduct of their client's case, and
- f. Participate in the drafting of the agreements and ensure that the agreements are accurate and legally binding.

4.6 Other participants

Other participants in ADR include

- a. professionals, experts, family members and interested parties who may participate as advisors and witnesses,
- b. witnesses present at ADR sessions, other than Arbitration, may provide information at their disposal in an informal manner,
- c. interpreters should be conversant with and observe the ADR values of confidentiality and non-disclosure.
- d. Chiefs, Traditional Rulers, Elders and Religious leaders and opinion leaders may participate as ADR practitioners or advisors.

CHAPTER FIVE PROCEDURE FOR COURT-CONNECTED ADR

5.1 Initiation of Court-Connected ADR

5.1.1 Initiation by Parties

Parties to Court-Connected ADR are parties by themselves or their representatives who have;

- a. appeared before a court, and
- b. consented to have their dispute settled by ADR.

5.1.2 Initiation by Court

A Court may

- a. at any stage of the proceedings refer a matter for negotiation, mediation or conciliation or any other ADR Process, and
- b. make the reference where one party communicates orally or in writing to the other in relation to the dispute asking that the dispute be resolved amicably, and the other party agrees to the request, and
- c. may encourage the parties to a dispute to settle the dispute themselves and report to the court within a specified time.

5.2 Order By Court

Immediately after the parties have consented to have their dispute settled by ADR, the court shall make an order specifying

- a. that the matter in dispute be settled by ADR,
- b. that the parties should appear before the ADR officer, and
- c. the time parties should appear in court to announce the outcome of the process which shall not be more than thirty days after the parties have appeared before the ADR Officer.

5.3 Register of Neutrals and ADR Service Providers

Every Court Registry shall maintain a register of